IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 728 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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AMRUTLBHAI REVABHAI PATEL
Versus
THE STATE OF GUJARAT AND OTHERS

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Appearance :
MR MB DODIA for the Petitioner
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for Respondent No.1
None for Respondent No.2
MR JV JAPEE for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 12/02/2007

ORAL JUDGMENT

1. Present revision application is filed by the original complainant praying that order dated 21.09.2006 below application Exh.31 in Sessions Case No.4 of 2006

passed by the learned Additional Sessions Judge and First Fast Track Court, Himmatnagar be quashed and set aside. It is also prayed that further investigation be ordered through Local Crime Branch, Himmatnagar or C.I.D. Crimes, Gandhinagar.

2. Learned Advocate Mr.Japee submitted that he has instructions to appear for both the respondents, i.e. respondent Nos.2 and 3. Respondent No.2 is, Jayantibhai Kalabhai Patel.

When asked to ascertain about his appearance, learned Advocate Mr.Japee submitted that though he has instructions to appear for both the respondents, he has filed his Vakalatnama in this Criminal Revision Application on behalf of respondent No.3 only. He requested that therefore, let it be stated that he is appearing for respondent No.3 only.

The resultant effect is that, respondent No.2, though served, has chosen not to appear before the Court in this Criminal Revision Application. There is yet another Criminal Revision Application, i.e. 725 of 2006. There, learned Advocate Mr.Japee has filed his appearance for respondent No.2 – Jayantibhai Kalabhai Patel. In that Criminal Revision Application, respondent No.3 - Kailashben, though served, remains unrepresented.

This is something curious. Two respondents, against whom the case of the complainant is that respondent No.2 got married to respondent No.3 misrepresenting that he is not married, chose to engage a common Advocate and instructed him to file Vakalatnama on behalf of respondent No.2 in one case and on behalf of respondent No.3 in another.

3. Application Exh.31 was filed setting out the circumstances in which the investigation was carried out by the Investigating Agency. The applicant had also set out the grounds on which the investigation was adversely affected. It was prayed that the investigation be ordered to be carried out by Local Crmie Branch, Himmatnagar (Rural) or C.I.D. Crimes, Gandhinagar.

The application was decided by the learned Additional Sessions Judge, Himmatnagar without taking trouble to discuss the decisions cited on behalf of the complainant. These decisions are listed in paragraph No.1 of his order by the learned Additional Sessions Judge. The same are as under:

(1)A.I.R. 1979 S.C. Page No.713.
(2)A.I.R. 1959 S.C. Page No.813.
(3)A.I.R. 1968 S.C. Page No.19.
(4)A.I.R. 1973 S.C. Page No.2190.
(5)A.I.R. 1961 S.C. Page No.725.

(6)A.I.R. 1978 S.C. Page No.1753.

The learned Additional Sessions Judge has mentioned these decisions, but has not cared to put it on record that these decisions are not applicable to the facts of the case.

The learned Additional Sessions Judge has referred to a decision of this Court in the matter of **MITESHKUMAR RAKESHBHAI PATEL VS. STATE OF GUJARAT**, reported in 2006 (12) G.H.J. 193, which was cited by learned Advocate Mr.K.B.Joshi appearing for the accused in support of his submission that, 'after the police has taken cognizance of the offence, taking into consideration the facts of the case, now further investigation cannot be ordered under Section 173(8) of the Criminal Procedure Code'.

4. The fact which ought to have been taken note of and should have been appreciated in right perspective in this particular case is that, 'on 07.04.2006, an application was filed by Shri Ishwarsinh K.Rahevar, A.S.I., 'Ilol' praying that in the case registered as C.R.I.No.273 of 2004 at Himmatnagar Town Police Station for offence under Sections 366, 380 and 114 of the Indian Penal Code, re-investigation is required, hence original charge sheet be returned'. This application was filed when the matter was before the learned Principal Sessions Judge,

Sabarkantha at Himmatnagar.

The matter was then transferred to the Court of learned Additional Sessions Judge and First Track Court, Himmatnagar. After this transfer, another application was filed on 12.05.2006 stating that, 'no investigation or further investigation is warranted'.

Without taking into consideration this glaring aspect, same officer filing different applications before the Court of learned Principal Sessions Judge and the learned Additional Sessions Judge, the learned Additional Sessions Judge has rejected application Exh.31 without recording any convincing reasons.

5. Having found that the learned Additional Sessions Judge has erred in rejecting application Exh.31 without there being any justifiable reason, order passed by the learned Additional Sessions Judge dated 21.09.2006 is hereby quashed and set aside. Application below Exh.31 is granted.

6. Office is directed to send a copy of this order along with copies of Exhs.9 and 10 filed in Sessions Case No.4 of 2006 and the copy of deposition of Investigating Officer – Exh.26 to the District Superintendent of Police, Sabarkantha at Himmatnagar for his personal

attention and perusal and to take necessary action against the erring officer. The report of action taken be placed before the Court.

The District Superintendent of Police is directed to decide to entrust the investigation either to a higher officer then the one who carried out the investigation or to the Local Crime Branch, Himmatnagar.

7. Revision Application is allowed. Rule is made absolute. Direct service is permitted.

(RAVI R.TRIPATHI, J.)

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